

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

U.S. ETHERNET INNOVATIONS, LLC,	)	
Plaintiff,	)	6:12-cv-00235-MHS-JDL
	)	LEAD CASE
v.	)	
	)	JURY TRIAL DEMANDED
RICOH AMERICAS CORPORATION,	)	
Defendant.	)	
	)	
U.S. ETHERNET INNOVATIONS, LLC,	)	Consolidated with:
Plaintiff,	)	6:12-cv-00236-MHS-JDL
	)	6:12-cv-00237-MHS-JDL
v.	)	6:12-cv-00329-MHS-JDL
	)	6:12-cv-00330-MHS-JDL
TRENDNET, INC., XEROX	)	6:12-cv-00351-MHS-JDL
CORPORATION, KONICA MINOLTA	)	6:12-cv-00366-MHS-JDL
BUSINESS SOLUTIONS U.S.A., INC., et al.,	)	6:12-cv-00398 MHS-JDL
SHARP ELECTRONICS CORPORATION,	)	6:12-cv-00481-MHS-JDL
DIGI INTERNATIONAL INC., et al.,	)	
CIRRUS LOGIC, INC., YAMAHA	)	
CORPORATION OF AMERICA,	)	
CONTROL4 CORPORATION, SAMSUNG	)	
ELECTRONICS CO., LTD., et al., and	)	
STMICROELECTRONICS N.V., et al.,	)	
	)	
Defendants.	)	
	)	

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY  
JUDGMENT OF INVALIDITY BASED ON INDEFINITENESS<sup>1</sup>**

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<sup>1</sup> L.R. CV-7(a)(2) requires that a party opposing a non-dispositive motion to limit its response to fifteen pages unless leave of court is first obtained. Non-dispositive motions specifically include motions for partial summary judgment. L.R. CV-7(a)(2). Because leave of court was not obtained, Defendants respectfully request that the Court not consider Plaintiff's Response beyond the fifteen page limit. *See Isbell v. DM Records, Inc.*, 2011 WL 1299611 at \*8 (E.D.Tex. Mar. 31, 2011).

**I. The “means for comparing” limitation of claims 1, 22, 34, 44, and 50 of the '459 Patent lacks corresponding structure.**

**A. No single structure performs the two recited functions.**

Plaintiff does not dispute that two structures – a comparator and a control block – are required to perform the “means for comparing . . . and generating” claim term. (Dkt. 178, Plaintiff’s Response (“Pl. Resp.”) at 8.) Under the correct interpretation of the *Cardiac Pacemakers* cases, *infra*, the Court should conclude that the independent claims of the '459 Patent are invalid as indefinite because the specification does not disclose sufficient corresponding structure. No single structure or reasonably grouped-together set of multiple structures performs the recited functions.<sup>1</sup> (*See* Ex. I to Plaintiff’s Opening Claim Constr. Brief (“*Acer* Second CC Order”) at 11.)

Plaintiff argues that Defendants’ reliance on *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, No. IP 96-1718-C H/G, 2000 WL 1902191 (S.D.Ind. Dec. 19, 2000) (“*Cardiac Pacemakers I*”) is misplaced because, “[o]n appeal, the Federal Circuit specifically rejected the proposition for which Defendants offer the district court order – that all ‘dual function’ claim terms must disclose a ‘single’ structure for performing both recited functions.” (Pl. Resp. at 11 (citing *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106 (Fed.Cir.2002) (“*Cardiac Pacemakers II*”)).) Plaintiff is incorrect. The Federal Circuit stated that in the case where the language of the limitations at issue refers to “a means for doing x and y,” “the claim could *potentially be ambiguous* about whether the limitation required one means for performing both

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<sup>1</sup> Strangely, Plaintiff states that it “will assume for the sake of addressing Defendants’ arguments that these terms recite two functions” and that it “reserves expressly the argument that Defendants have not correctly identified the function in these terms,” despite the fact that Plaintiff itself previously identified the identical two functions. (Ex. A to Plaintiff’s Patent Rule 4-2 Disclosure of Preliminary Claim Constructions and Extrinsic Evidence (“Pl. 4-2 Chart”) at 3.)

functions x and y, or simply one means for performing function x and one (potentially different) means for performing function y.” *Cardiac Pacemakers II*, 296 F.3d at 1115.

Thus, Judge Ware determined claim 1 of the '459 Patent and claim 13 of the '313 patent required a single means for performing the two recited functions per *Cardiac Pacemakers II*. In doing so, Judge Ware applied the principle that: “[w]hen dual functions must be performed by the ‘means,’ the patent document must disclose either a single structure that performs both functions or multiple structures, each of which performs one of the functions, but the multiple structures reasonably may be grouped together as subcomponents of a larger component that performs both functions.” (*Acer* Second CC Order at 8-9.)

As noted above, Plaintiff does not dispute that the '459 Patent fails to disclose a single structure that performs the recited functions. (*See* Pl. Resp. at 8.) Thus, Plaintiff argues that one having skill in the art would reasonably group the corresponding structures as subcomponents of the “threshold logic.” However, the proper inquiry is whether the intrinsic evidence would lead the Court to find that a person having skill in the art would group these distinct components into a single component. (*Acer* Second CC Order at 11.) According to the specification, the “threshold logic” is not a single structure but an aggregate of many different components. (*See* '459 Patent, Fig. 2.) In fact, if the construction offered for the term “logic” by all parties is applied, “threshold logic” is “threshold circuitry” – by definition a collection of different and separate threshold circuitry components. Indeed, Plaintiff has cited to numerous illustrations in the '459 Patent specification that prove that, according to its own constructions, what it has identified as the first corresponding structure (the comparator) is distinct from what it has

identified as the second corresponding structure (the control block).<sup>2</sup> However, the most persuasive evidence that the “threshold logic” is made of separate and different components is claim 1 (as cited by Plaintiff’s own expert): “wherein the threshold logic includes, a counter...an alterable storage location containing a threshold value...and means for comparing the counter to the threshold value in the alterable storage location and generating an indication signal [in response].”<sup>3</sup> (Dkt. 158-1, Decl. of Dr. Miztenmacher at ¶ 17.)

**B. The structure identified by Plaintiff is purely functional.**

According to Plaintiff, the corresponding structure for the “comparing” function is anything that compares, *i.e.*, a comparator. But “[t]his type of purely functional language, which simply restates the function associated with the means-plus-function limitation, is insufficient to provide the required corresponding structure.”<sup>4</sup> *Noah Systems, Inc. v. Intuit Inc.*, 675 F. 3d 1302, 1317 (Fed. Cir. 2012). Plaintiff’s comparator “structure” is a tautology, failing to define claim scope beyond the function itself, and as such, the claims containing this language are indefinite.

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<sup>2</sup> See Pl. 4-2 Chart at 3 (identifying blocks 224 and 213 of Fig. 14, 318 of Fig. 21, 517 of Fig. 26, 615 of Fig. 31 of the '459 Patent as “comparators” and different blocks 225 and 210 of Fig. 14, 57 of Fig. 4, 512 of Fig. 24, 512 of Fig. 27, and 625 of Fig. 33 of the '459 Patent as “control blocks”).

<sup>3</sup> Given that the specification expressly describes “threshold logic” as multiple components, and given that the parties agree on the construction of the term, defendants meet their burden of proof absent expert testimony under these circumstances.

<sup>4</sup> Plaintiff argues that the circumstances in *Microsoft Corp. v. Motorola Inc.*, 2013 WL 454268 (W.D. Wash. Feb. 7, 2013) are not analogous because “the ‘decoder’ in *Microsoft* was defined ‘expansively’” and “[h]ere, in contrast, a single device, the comparator must only perform the sole function it was designed to perform.” (Pl. Resp. at n.12.) Plaintiff misses the point. Because the comparator disclosed in the '459 Patent fails to “amount to anything more than ... a functional description,” the “‘means for [compar]ing’ limitations claim all corresponding structure under the sun by expansively defining the function in the specification as anything that [compares two values]. This definition renders the ‘means for [compar]ing’ limitation invalid for indefiniteness.” *Id.* at \*13.

Plaintiff also cites *Golight, Inc. v. Wal-Mart Stores, Inc.*, 355 F.3d 1327, 1334-35 (Fed. Cir. 2004) for the proposition that “[t]he correct corresponding structure is that which is minimally necessary to carry out the claimed function.” However, the Court in *Golight* explicitly cited to the excerpts of the specification of the patent-at-issue for the correct corresponding structure. *Id.* at 1334 (“The '989 patent describes the structure for rotating the lamp unit as follows...”.) Plaintiff cannot cite to the specification here as there is no disclosure of the structure for the comparator, only the function.

Plaintiff argues a comparator is well-known in the art. (Pl. Resp. at 13-14.) The indefiniteness of the comparator does not hinge on how well-known it is, but the disclosure of its structure in the intrinsic evidence. (*See Acer Second CC Order* at 11.) It is not discernible from the '459 Patent whether the comparator is software or hardware, analog or digital, or whether it receives values in serial or parallel. Plaintiff's own proffered example illustrates this very point. Plaintiff refers not to the specification, but only to a dictionary, which states, "[i]n electronics, for example, a comparator is a circuit that compares two input voltages and indicates which is higher." (Pl. Resp. at 13.) This definition fails to provide any structure at all, and could not enable a person of ordinary skill to understand the term as used in the claims of the '459 Patent.<sup>5</sup>

**II. The "host interface means" limitation of claim 13 of the '313 Patent lacks corresponding structure.**

Plaintiff does not dispute that there is no single structure disclosed in the '313 patent that performs the three recited functions. (Pl. Resp. at 16.) Thus, Plaintiff argues that one having skill in the art would reasonably group the corresponding structures into a larger component. (*Id.* at 18-19.) Claim 13 of the '313 Patent is invalid as indefinite because the specification of the '313 Patent does not disclose sufficient corresponding structure. No single structure or reasonably grouped-together set of multiple structures performs the recited functions.<sup>6</sup> (*See Acer Second CC Order* at 16-17.)

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<sup>5</sup> Plaintiff cites four cases for the premise that "many courts – including this Court – have recognized a 'comparator' as sufficient corresponding structure." Pl. Resp. at 14-15. However, not one of these cases addressed the indefiniteness of a disclosure of a "comparator" in a purely functional manner. *See Aerotel, Ltd. v. Telco Group, Inc.*, 433 Fed. Appx. 903, 910 (Fed. Cir. 2011); *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1300 (Fed. Cir. 2011); *Hitachi Consumer Elecs. Co., Ltd. v. Top Victory Elecs. (Taiwan) Co., Ltd.*, No. 2:10-CV-260-JRG, 2012 WL 5494087 at \*9-10 (E.D. Tex. Nov. 13, 2012); *Celltrace LLC v. AT&T Inc.*, No. 6:09cv294 LED-JDL, 2011 WL 738927 at \*21 (E.D. Tex. Feb. 23, 2011).

<sup>6</sup> Again, Plaintiff surprisingly states that it "will assume for the sake of addressing Defendants' arguments that these terms recite three functions" and that it "reserves expressly the argument that Defendants have not correctly identified the function in this term," despite the fact that Plaintiff itself identified the identical three functions." (Pl. 4-2 Chart at 3-4.)

For the reasons discussed above, the analysis in *Cardiac Pacemakers I* should be applied and the “host interface means” claim terms should be found indefinite for lack of corresponding structure. (*Id.* (“The Court’s attention has not been drawn to anything in the intrinsic evidence that would lead the Court to find that a person of ordinary skill in the art would group these individual functional components into a single component.”)) Just as with the '459 Patent, the corresponding structures identified by Plaintiff – the XMIT AREA, XFER AREA, and upload DMA logic – are not logically contained within a single structure. Plaintiff’s expert argues that block 102 (entitled ‘host interface logic’) of Figure 3 incorporates the XMIT AREA, the XFER AREA, and the upload DMA logic.” (Decl. of Dr. Mitzenmacher at ¶ 24.) However, this example demonstrates that these are disclosed separately in the '313 Patent specification and not to be grouped together as a single component. While Fig. 3 indeed has a block 102 for the host interface logic (illustrated with a dashed line), block 102 specifically contains two distinct blocks: 107 (titled “XMIT DESCRIPTOR AND DOWNLOAD DMA LOGIC”) and 108 (titled “VIEW, XFER, AND UPLOAD DMA LOGIC”). According to Plaintiff’s expert, the transmit descriptor logic (block 107) is associated with the XMIT AREA and the transfer descriptor logic (block 108) is associated with the XFER AREA. *Id.* Thus, the XMIT AREA and XFER AREA are explicitly separated into two distinct blocks because they are not to be grouped as a single component.<sup>7</sup>

### III. Conclusion

For the reasons above, Defendants respectfully request that this Court enter summary judgment of invalidity of independent claims 1, 22, 34, 44, and 50 of the '459 Patent; independent claim 13 of the '313 Patent; and all claims depending therefrom, as indefinite.

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<sup>7</sup> Similarly, there are figures in the specification that address the three structures as separate components. (*See, e.g.*, '313 Patent at Fig. 9 (which includes block 151 (download DMA logic) and the XMIT AREA register) compared to *id.* at Fig. 11 (which includes the block 300 (upload DMA logic) and the XFER AREA register).)

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was served upon all counsel of record via the Court's ECF on March 28, 2013.

/s/ Michael Chibib

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